

IP 98-0057-CR 7 H/F USA v Garcia
Magistrate Kennard P. Foster

Signed on 05/05/2006

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 98-57-CR-07 (H/F)
)	
JOEL GARCIA,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable David F. Hamilton, Judge, on May 3, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on May 1, 2006, and to submit to Judge Hamilton proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings regarding this matter were held on May 5, 2006, in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Mr. Garcia appeared in person and his appointed counsel, Bill Dazey, Office of the Indiana Federal Community Defender’s Office. The government appeared by Josh Minkler, Assistant United States Attorney. U. S. Parole and Probation appeared by Dwight Wharton, U. S. Parole and Probation Officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. That Bill Dazey, Office of the Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Garcia in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Garcia and his counsel who informed the Court they had read and understood the specification of violations charged herein and waived further reading thereof.

3. That Mr. Garcia was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. That Mr. Garcia would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. That Mr. Garcia had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. That if the preliminary hearing resulted in a finding of probable cause that Mr. Garcia had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Hamilton's designation entered on March 3, 2006.

7. Mr. Garcia stated his readiness to waive the preliminary hearing. Mr. Garcia then waived, in writing, the preliminary hearing and he was held to answer.

8. The parties, by counsel, stipulated that Mr. Garcia will admit that he failed to notify the U. S. Parole and Probation Department within 72 hours that he had been arrested by the Marion

County Sheriff's Department on April 21, 2006. Counsel further stipulated that upon Mr. Garcia's admission to that violation, the government would dismiss Violation Number 1.

Counsel for the parties further stipulated the following:

- 1) Mr. Garcia has a relevant criminal history category of IV. *See*, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation was stipulated to by the parties to be a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Mr. Garcia is 6 to 12 months.
- 4) The parties did not agree as to the appropriate disposition for Mr. Garcia's violation of the conditions of supervised release and that each offered evidence and/or arguments in that regard to the Magistrate Judge.

9. The Court then placed Mr. Garcia under oath and inquired directly of him whether he admitted committing Violation Number 2 of supervised release contained in the Petition to Revoke Supervised Release. Mr. Garcia admitted the violation. After he admitted the violation, the government moved to dismiss Violation Number 1 and the Court granted same.

The Court, having heard the admissions of the defendant and the stipulations of parties and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant violated the above-delineated condition of his supervised release. The defendant's supervised release is therefore **MODIFIED** and Joel Garcia's supervised release shall continue as previously set, with the following modifications:

- (1) After Mr. Garcia completes any electronic monitoring required by the State charges he now faces, he will reside at his residence under electronic monitoring for a period of up to six months, to be paid for by him, in accordance with the rules and regulations as set forth by the U. S. Parole and Probation Office for the Southern District of Indiana. While on electronic monitoring, Mr. Garcia will be at his residence unless he is engaged in his employment, attending church services, seeking

or receiving medical treatment, or as specifically engaged in any other activity approved by his supervising U. S. Parole and Probation Officer.

(2) Upon completion of his electronic monitoring order, he shall continue on the previously-ordered supervised release conditions.

WHEREFORE, Mr. Garcia's supervised release is **MODIFIED** as set forth above.

Counsel for the parties and Mr. Garcia stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation modifying Mr. Garcia's supervised release.

IT IS SO RECOMMENDED this 5th day of May, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court
Southern District of Indiana

Distribution:

Josh Minkler,
Assistant United States Attorney
10 West Market Street, #2100
Indianapolis, IN 46204

Bill Dazey,
Office of Indiana Federal Community Defender

111 Monument Circle, #752
Indianapolis, IN 46204

U. S. Parole and Probation

U. S. Marshal Service